

Environmental Quality Board Study of Mandatory Threshold Levels for Environmental Review



NONMETALLIC MINERAL MINING (EXCEPT PEAT) CATEGORY

Introduction

At its January 2004 meeting, the Environmental Quality Board (EQB) asked its staff to examine the mandatory category threshold levels in the environmental review rules (Mn Rules parts 4410.4300 and 4410.4400). Board members wanted to know if the thresholds are still appropriately placed to balance environmental protection and public benefit with administrative burden.

Potential Changes in the Nonmetallic Mineral Mining Category

The following changes are being considered for the Nonmetallic Mineral Mining Category:

- 1) Lower the mandatory EAW threshold from 40 acres to 20 acres (retaining the 10 foot minimum depth requirement.
- 2) Clarify how other past, present and potential future mining in the immediate area should be taken into account when determining if a specific mining proposal requires review and in preparing the review if needed; these clarifications may or may not require rule amendments.

Background information

Current Thresholds

There are two parts to the nonmetallic mineral category in the present rules: peat and all other nonmetallic minerals, including sand, gravel and building stone. This report deals only with the “non-peat” part of this category, for which the current threshold is as follows:

Mandatory Environmental Assessment
Worksheet (4410.4300, subpart 12, item B)

For the development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of land to a mean depth of ten feet or more during its existence. The RGU is the local unit of government.

Mandatory Environmental Impact Statement (4410.4400, subpart 9, item B)

For the development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 160 or more acres of land to a mean depth of ten feet or more during its existence. The RGU is the local unit of government.

Survey Results

The results from the RGU surveys for the nonmetallic mineral mining EAW category indicated that only about half of the respondents felt the existing threshold was appropriate. Among the half that thought the threshold should be changed, twice as many supported lowering it (36%) as supported raising it (18%).

Discussion with Industry Representatives

To get a better understanding of how nonmetallic mining project proposers feel about environmental review and the mandatory threshold levels, a discussion was held with members of the Aggregate & Ready Mix Association of Minnesota on September 10, 2004. One of the recommendations from the industry representatives was that the EAW threshold should be lowered to 20 acres.

The industry representatives also recommended that the mandatory EIS threshold of 160 acres be eliminated and that all EISs for nonmetallic mineral mining (except peat) be ordered on a case-by-case basis through the EAW process.

Information from EQB Staff Interaction with RGUs, Proposers, and Citizens

In recent years, the EQB staff has been increasingly active in giving assistance to RGUs, proposers, and citizens about the interpretation of the non-metallic mining category thresholds for specific proposed projects. As a result of these experiences the staff has identified several issues about the nonmetallic mineral mining categories in addition to the question of the appropriate thresholds. Some of these same issues are also involved in a citizens' legal challenge over the environmental review of certain sand and gravel mining permits now in the Minnesota Court of Appeals.

The first such issue is what is meant by a nonmetallic mining "facility"? Is it the same as the area proposed to be excavated, or does it include other areas as well; in particular, does it include past mined areas in the vicinity if they have not yet been reclaimed?

A second issue is what is meant by the phrase "during its existence"? Does this phrase imply that an existing or former mine that has not been reclaimed must be included as a phased action with respect to any expansions or new mines in the area regardless of the "3-year look-back rule" at part 4410.4300, subpart 1?

A third issue is how the principle of cumulative impact assessment relates to past or potential mines in the area when determining the need for review of a mining proposal and in preparing environmental documents.

Independent of the question of lowering the EAW threshold or eliminating the EIS threshold, these issues may need to be clarified through rule amendments.

Rationale for Changes

Lowering the mandatory EAW threshold to 20 acres with a mean depth of 10 feet is consistent with the results of the local government unit survey and the focus group of aggregate mining companies.

Clarifying how to treat other mining that has been done or may be done in the area when applying the thresholds and in preparing EAWs (and EISs) for nonmetallic mining will add clarity to the non-metallic mining categories. This type of project has been one of the more troublesome ones for RGUs, proposers, and citizens to deal with in terms of when review is required and what the scope of that review should be. In fact, presently there is a case under review in the Court of Appeals which in part hinges on these issues.